IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 235 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)

Versus

STANDARD RADIATORS PVT.LTD. - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant
MR JP SHAH WITH MR MANISH J SHAH for Respondent
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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 01/12/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1.The Income Tax Appellate Tribunal, Ahmedabad

Bench “C” has referred the following question under Section 256(1) of the Income Tax Act, 1961 (the Act) at the instance of the Commissioner of Income Tax:

> “Whether, on the facts and circumstances of the case, the Tribunal was right in law in reversing the order of A.O. confirming the disallowance of Rs.66,577/- being payment of bonus of earlier years?”

2.In light of the facts available on record, it has become necessary to reframe the question and the reframed question is:

> “Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in holding that a sum of Rs.66,577/- being the payment of bonus was an allowable deduction?”

3.The assessment year is 1981-82 and the relevant accounting period is calender year 31st December 1980. For understanding the controversy, it is

necessary to take note of the facts as recorded in the assessment order, because in the impugned order dated 27/9/1993, the Tribunal has failed to record complete and correct facts. Had the Tribunal done so, there would have been no necessity of making a reference.

4. The assessee, a Limited Company paid bonus amounting to Rs.66,577/- and claimed the same as deductible expenditure. The assessing officer, on scrutiny of accounts, came to the conclusion that the bonus was relatable to calender year 1979. He also found that the assessee had changed the method of accounting from cash to mercantile effective from the year under consideration, and hence, had made a claim of a sum of Rs.71,700/- being provision for bonus payable for calender year 1980. The assessing officer, at the stage of draft assessment, disallowed the amount of Rs.71,700/-, namely the provision made while

allowing the deduction of Rs.66,577/- actually paid during the accounting period. The Inspecting Assistant Commissioner, while issuing directions under Section 144B of the Act, directed the assessing officer to allow the provision of Rs.71,700/- and disallow Rs.66,577/-, which was the amount actually paid, as according to the Inspecting Assistant Commissioner, the same being relatable to calender year 1979, could not be permitted to be deducted as the system of accounting was mercantile. The assessing officer, thus, while framing the assessment order, disallowed the sum of Rs.66,577/- actually paid as bonus during the year while granting deduction of the sum of Rs.71,700/- being the provision.

5.The assessee carried the matter in appeal, but did not succeed before the Commissioner (Appeals). In the second appeal before the Tribunal, the issue was decided in favour of

the assessee by the Tribunal by relying upon decision of Bombay High Court in the case of British Airways v. Commissioner of Income Tax, [1992] 193 ITR 349. While doing so, the Tribunal distinguished the decision of Calcutta High Court in the case of Seth Chemical Works v. Commissioner of Income Tax, West Bengal-X, [1983] 140 ITR 507.

6. At the time of hearing, Mr.M.R.Bhatt, the learned senior standing counsel relied upon the aforesaid decision of Calcutta High Court, to contend that the bonus which was relatable to earlier year was wrongly allowed as a deduction. For this purpose, he also relied on the frame of the question referred to this Court, to submit that there was no dispute that the bonus was relatable to earlier years. As against that, the learned advocate for the respondent has relied upon the impugned order of Tribunal, to submit that there was no

warrant for any interference, in absence of any error committed by the Tribunal.

7. As the facts narrated in the assessment order reveal, the assessee company had been following mercantile system of accounting from accounting year 1963 upto 1974, and had been claiming deduction of bonus on the basis of the provision made. That for accounting periods 1975 and 1976, no bonus had been paid by the assessee Company. For the accounting year 1977, the bonus was paid in calender year 1978 by switching over to the cash system of accounting. Thereafter, the assessee Company had been claiming payment made on cash basis, namely, the bonus relatable to the immediately preceding accounting period was consistently being paid in the immediately next accounting period i.e. after the end of the accounting year.

8.During the year under consideration, because the assessee switched over from cash system of accounting to mercantile system of accounting, it appeared that the assessee had claimed double deduction: one on the basis of cash payment, and another on the basis of mercantile system of accounting, namely, provision made. However, apart from the fact that this might be a necessary concomitant in the year of change of system of accounting, what is more material is the assessee had been consistently paying bonus on cash basis in the past after the end of the accounting period and the same modality was adopted in the year under consideration. Therefore, to state that this was payment relatable to earlier years is not absolutely correct.

9.In these circumstances, it is not necessary to enter into discussion as to the legal niceties, there being no dispute that payment of bonus is

otherwise an allowable deduction, the only dispute raised by revenue being the year of allowability. In light of the facts which have come on record, the Tribunal was justified in holding that the amount of Rs.66,577/- being bonus actually paid during the accounting year was an allowable deduction. The question is accordingly answered in the affirmative i.e. in favour of the assessee and against the revenue.

10.The Reference stands disposed of accordingly. There shall be no order as to costs.

[D.A.MEHTA, J.]

[HARSHA DEVANI, J.]

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